

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

IP-Enabled Services

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WC Docket No. 04-36

COMMENTS OF MOTOROLA, INC.

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Dated: May 28, 2004

SUMMARY

Motorola believes that IP-enabled services, including VoIP, will transform communications, offering enormous consumer benefits including lower prices and new services. Motorola is dedicating substantial resources toward making the promise of IP into marketplace reality. Central to Motorola's commitment is the concept of seamless mobility, in which consumers have complete end-to-end communications as they move between and among different environments and technologies. To realize that vision, Motorola believes it is imperative that the Commission maintain its light regulatory touch for IP-enabled services by taking three critical steps.

First, Motorola urges the Commission to exercise its authority under the Communications Act to preempt state regulation of IP-enabled services immediately. Without such action, a confusing web of state regulations likely to be in conflict with each other and with federal regulations will emerge. This situation would create unneeded regulatory confusion and uncertainty, stifling investment in VoIP technologies and the development of the still nascent industry.

Second, the Commission should clarify the jurisdictional nature of IP-enabled services, beginning with VoIP – no later than the end of this year. Based on a number of related proceedings already before the Commission, an extensive record exists to guide the Commission in deciding whether IP-enabled services constitute information services or telecommunications services. As with the preemption issue, a decision on regulatory classification will further the Commission policy of regulatory certainty, spurring needed investment.

Third, the Commission should permit industry groups to complete ongoing efforts to develop voluntary compliance plans for certain important social goals, such as access for people with disabilities and deployment of emergency services. Motorola believes that voluntary

industry consensus, rather than regulation, will address those goals efficiently without stifling the progress of this promising technology.

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Motorola, Inc. (“Motorola”) is pleased to submit these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ Motorola applauds the Commission for its leadership in commencing this proceeding and in initiating a comprehensive inquiry into how and to what extent IP-enabled services, including Voice over Internet Protocol (“VoIP”), should be regulated. As detailed below, Motorola believes the Commission should continue its light regulatory touch for IP/VoIP. The Commission should take immediate action to preempt state regulation of IP-enabled services. In addition, the Commission should clarify the jurisdictional status of IP-enabled services, beginning with VoIP, not later than the end of this year, to provide regulatory clarity to the VoIP industry. Furthermore, the Commission should permit industry groups to complete ongoing efforts to develop voluntary compliance plans to achieve important social goals, such as access for people with disabilities and deployment of emergency services.

¹ *IP-Enabled Services*, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, FCC 04-28 (rel. Mar. 10, 2004) (“*IP NPRM*”)

I. VOIP IS CRITICAL TO MOTOROLA'S SEAMLESS MOBILITY VISION

Motorola's position as a leading consumer electronics and telecommunications equipment manufacturer provides it with a broad perspective on developing VoIP technology. Motorola designs consumer devices and infrastructure for virtually every communications sector. Our products include cable infrastructure and consumer equipment, wireline and wireless communications infrastructure and consumer equipment, including both commercial and private systems, and telematics communications equipment embedded in vehicles.

Providing a seamless mobile experience across all user environments—home, vehicle, office, and beyond—is a key characteristic of Motorola's approach to its development of VoIP products and services. Motorola's seamless mobility vision provides complete end-to-end communications that can lower communications costs, increase user efficiencies and create new capabilities. With seamless mobility, devices will adapt to their owners. Devices will know where consumers are, their preferences, their schedule, where they want to go and what they want to do when they get there. Phones will be capable of paying for parking with the touch of a key. Cars and homes will be capable of storing, sharing and continuously updating consumer information to make life simpler, smarter, safer, synchronized and more fun. All the while, these communications capabilities will travel seamlessly with the consumer across domains, with the transition between networks imperceptible to the consumer.

To effectuate this seamless mobility vision, wired and wireless communications networks will converge, accessed by a single device, such as an 802.11/cellular phone, providing wireless VoIP telephony services that extend to the wide area cellular network outside without dropping calls. End user services connected and transported by Internet protocols are a key facilitator of a seamless mobile experience. Among these Internet-based services, the advancement of VoIP is a critical element in making this seamless mobile experience a successful reality.

The effective use of these Internet protocols that are so critical to the seamless mobile experience depends primarily on the continued evolution from circuit-switched networking to packet-based networking. Decisions made by the Commission in this IP-Enabled Services proceeding will establish a framework for the future stages of this evolution. VoIP applications will be among the first applications deployed to consumers as they move to seamless mobility. How the Commission balances regulatory and public-interest goals with the flexibility necessary for this nascent service to develop will set the tone for the regulatory regime that will apply to other future packet technologies. If regulatory decisions complicate and burden the transition to packet-based technology unnecessarily, the spread of seamless mobility and its attendant benefits could be impaired substantially.

In connection with its seamless mobility vision, Motorola is dedicating substantial resources toward the deployment of VoIP. For example, Motorola is developing technologies in the following areas:

- wireless access systems suitable for VoIP transport
- end user devices that possess multi-network capability, including VoIP networks
- inter-network device mobility, including IP-based mobility
- end to end IP-based high quality of service
- services, including VoIP, accessed across multiple network types and that adapt to the characteristics, user environments, and usage contexts of different networks.

All of these VoIP technologies are important components of Motorola's seamless mobility vision. A further description of Motorola's VoIP products, services and resources are provided in Appendix A, attached hereto.

II. THE COMMISSION SHOULD TAKE IMMEDIATE ACTION TO PREEMPT STATE REGULATION

Motorola is concerned that state regulatory efforts or policies may undermine the promise of VoIP. In order to avoid the imposition of a patchwork of inconsistent state regulation that also is likely to be inconsistent with the federal approach, Motorola urges the Commission to take expeditious action to preempt state regulation of IP-enabled services.

A. A Patchwork of State Regulation of VoIP Would Stifle Competition, Investment and Innovation

Motorola is concerned that various states' efforts to determine the appropriate level of regulation of VoIP in advance of action by the FCC could undermine the potential economic and consumer benefits of VoIP. VoIP is a nascent service that is beginning to attract significant interest from consumers as well as from network operators and equipment suppliers. The creation of multiple and potentially conflicting layers of state and federal regulation could well foreclose future investment in VoIP and limit further commercial deployment of the service.

Because many VoIP service and equipment providers operate on a multi-state or national basis, the prospect of various states addressing and resolving these important regulatory issues in different and inconsistent ways is likely to undermine severely the ability of new and potential VoIP providers to raise capital, plan systems, and compete effectively. This is especially true because a competitive multi-state rollout of VoIP requires central planning efficiencies—such as ordering, provisioning, and billing systems—that flow from regulatory consistency. Most providers of VoIP services do not have the resources to monitor and comply with fifty-one different sets of state regulation in addition to federal requirements. The task of complying with multiple state regulatory regimes would burden smaller, less established companies especially. Preemption will provide the unified set of rules necessary for this industry to develop.

B. Preemption Would Prevent the Confusion of State Regulations That May Be Inconsistent with the Federal Policy on VoIP

Federal preemption is needed to forestall state regulations that may be inconsistent with the federal rules or policies covering VoIP products and services.² Many of the state regulatory bodies are moving to adopt a more regulatory approach to VoIP than the Commission has signaled it is likely to adopt. Early federal preemption will prevent the states from establishing their own disparate regulatory frameworks that will need to be disassembled when federal policy is inconsistent. Such a reversion would be costly and confusing to the entire VoIP industry.

At this time, a number of state commissions have imposed, or are considering imposing, legacy common carrier regulations on VoIP service. For example, the California Public Utilities Commission (“CPUC”) is currently conducting an investigation on the CPUC’s own motion into whether VoIP should be subject to a number of common carrier regulations. The CPUC has tentatively concluded that “VoIP that is interconnected with the Public Switched Network qualifies as a public utility telecommunications service”³ and seeks comment on the appropriate regulatory framework that should apply to such services. Motorola and many other commenters have urged the CPUC to postpone its investigation until the FCC has established a national policy for VoIP regulatory treatment.⁴ Similarly, the Michigan Public Service Commission has

² When it is acting within the scope of its congressionally delegated authority, the Commission has the authority to preempt state regulation of intrastate communications when state decisions regarding intrastate communications would impede the exercise of lawful federal authority over interstate communications. *Louisiana Pub. Service Comm’n v. FCC*, 476 U.S. 355, 375 (1986).

³ *Order Instituting Investigation on the Commission’s Own Motion to Determine the Extent to Which the Public Utility Telephone Service Known as Voice over Internet Protocol Should be Exempted From Regulatory Requirements*, I.04-02-005, Order Instituting Investigation, 15 (filed Feb. 11, 2004) (“OIF”).

⁴ *Order Instituting Investigation on the Commission’s Own Motion to Determine the Extent to Which the Public Utility Telephone Service Known as Voice over Internet Protocol Should be Exempted From Regulatory Requirements*, I.04-02-005, Comments of Motorola, Inc. (filed April 5, 2004).

initiated an investigation into “the proper degree of regulation” of VoIP.⁵ And just last week the New York State Public Service Commission ruled that Vonage, a VoIP service provider, is a telephone corporation as defined by New York State Law and, therefore, subject to state regulation.⁶

In contrast, the Commission has signaled consistently its support for refraining from unnecessary regulation of VoIP services. In its latest decision on the issue, the Commission found pulver.com’s Free World Dialup service to be an unregulated information service under Title I of the Communications Act.⁷ This decision is illustrative of the Commission’s policy of refraining from traditional regulation of advanced technologies. Similarly, in his Statement accompanying the *IP NPRM*, Chairman Powell noted, “Our starting point – and our most important finding – is the recognition that all IP-enabled services exist in a dynamic, fast-changing environment that is peculiarly ill-suited to the century old telephone model of regulation.”⁸ Commission Abernathy has said that “[the Commission’s] job is to ensure that we do not inadvertently stifle [] innovation by reflexively applying yesterday’s regulatory framework to new products and services.”⁹ This federal policy approach appears to be at odds with the state commission proceedings currently underway.

⁵ “MPSC Starts Investigation into Voice over Internet Protocol Issues in Michigan, U-14073,” Michigan Public Service Commission Press Release, March 16, 2004.

⁶ “PSC: Vonage is a Telephone Corporation as Defined by NYS Law – Commission Seeks to Maximize Benefits of New Technology, Protect Core Public Interest,” State of New York Public Service Commission Press Release, May 19, 2004.

⁷ *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, Memorandum Opinion and Order, WC Docket No. 03-45, FCC 04-27 (Feb. 19, 2004) (“*pulver.com Order*”).

⁸ *IP NPRM*, Statement of Chairman Michael K. Powell.

⁹ Remarks of Commissioner Kathleen Q. Abernathy at The Quello Center, Telecommunications Management and Law, Michigan State University, Feb. 19, 2004 (as prepared for delivery).

Given these state initiatives, it is imperative for the Commission to take swift action to immediately and fully preempt state VoIP regulations that conflict with the stated direction of federal regulations and policies. As noted above, the Commission has the authority to issue a decision preempting state activity on VoIP before any of the above-mentioned inconsistencies arise.¹⁰ If the Commission delays, the damage to the deployment of VoIP services, the VoIP equipment and services markets, and consumers may be irreversible. However, by immediately issuing an order preempting state action, the Commission would allow stakeholders to focus their energies and efforts on establishing the appropriate federal regulatory framework and on voluntary consensus-building to achieve important social goals.

III. THE COMMISSION SHOULD MOVE QUICKLY TO RESOLVE THE VOIP REGULATORY CLASSIFICATION ISSUE, CONTINUING ITS POLICY OF ALLOWING VOIP SERVICES TO EVOLVE FREE FROM UNNECESSARY REGULATION

A. The Commission Should Clarify The Status Of VoIP Services By Year End

To resolve uncertainty for the nascent VoIP industry, the appropriate regulatory classification of VoIP services should be established as quickly as possible—no later than the end of this year. As a result of this and other proceedings, the Commission has an extensive record before it. Resolving this key issue would eliminate substantial uncertainty, spurring investment in and development of these promising services.

To date, a substantial record has been created to assist the Commission in determining the appropriate regulatory classification for VoIP services. In addition to this proceeding, the Commission has considered the proper regulatory classification of IP-enabled services in several

¹⁰ See *Louisiana Pub. Service Comm'n v. FCC*, 476 U.S. at 375.

others, including proceedings regarding universal service,¹¹ intercarrier compensation,¹² and broadband telephony.¹³ Recent decisions on petitions asking the Commission to rule on the classification issue for particular services illustrate that the Commission has the information it needs to act on this matter. Indeed, the Commission's recent declaratory ruling that AT&T's specific service is not exempt from access charges¹⁴ and its decision classifying pulver.com's Free World Dialup service as an unregulated information service¹⁵ constitute guideposts for the Commission at each end of the decision-making spectrum. The Commission's record on this issue is supplemented by public comments received in response to other VoIP-related petitions as well.¹⁶ Together, all of these sources of information and precedent serve as a sound basis for a

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501 (1998) ("*Stevens Report*").

¹² *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) ("*Intercarrier Compensation NPRM*").

¹³ *Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (1999) ("*Disability Access Order*"); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket Nos. 02-33, 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) ("*Wireline Broadband NPRM*").

¹⁴ *Petition for Declaratory Ruling Petition for Declaratory that AT&T's IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361; Order, FCC 04-97 (rel. Apr. 21, 2004) ("*AT&T Phone-to-Phone Declaratory Ruling*").

¹⁵ *pulver.com Order*.

¹⁶ See *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211 (filed Sept. 22, 2003); *Pleading Cycle Established for Comments on Petition of Level 3 Communications LLC for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1) and Rule 69.5(b)*, WC Docket No. 03-266; Public Notice, DA 04-01 (rel. Jan. 2, 2004); *Pleading Cycle Established for Comments on Petition of SBC Communications Inc. for Forbearance Under Section 10 of the Communications Act from Application of Title II Common Carrier Regulation to "IP Platform Services,"* WC Docket No. 04-29, Public Notice, DA 04-360 (rel. Feb. 12, 2004).

final determination as to whether VoIP services constitute information services or telecommunications services.

A decision on the classification issue also would further the Commission's longstanding policy goal of fostering regulatory certainty. At present, the VoIP industry is still evolving. The potential applications and marketplace for VoIP technology are still not fully known. VoIP has been able to emerge to date under the Commission's deregulatory approach. However, the threat of uncertain, let alone increased, regulation discourages consumers, manufacturers and providers of VoIP services from fully embracing this technology. As a result, investment needed to spur future innovations will be retarded and creative approaches to further development of this technology will be discouraged. Both effects limit the opportunity for VoIP to compete effectively with existing telecommunications services. Consequently, it is essential that the Commission move quickly—at least by the end of the year—to remove the cloud from over the VoIP industry and to provide industry and consumers with the certainty necessary for them to continue investing confidently in this promising technology.

Finally, in no event should the Commission apply public interest requirements to VoIP services such as disability access and lawful intercept before establishing an appropriate regulatory classification. Classifying VoIP services first would identify a group of regulatory analogs to which the Commission could compare VoIP in determining how to apply the above-mentioned public interest requirements. Indeed, applying these requirements before classifying VoIP services could very well lead the Commission to: 1) prejudge or confuse the VoIP classification determination; 2) apply the public interest requirements to VoIP in a manner inconsistent with its legal or statutory precedents; or 3) impose requirements that it would ultimately have to remove. In each of these three instances, the result would be continued

regulatory uncertainty. The third instance would have the added disadvantage of wasting agency and industry resources. Accordingly, the Commission should act now to classify VoIP services before applying its public interest requirements.

B. The Developing Nature of the VoIP Industry Requires a Light Regulatory Touch

Due in part to the Commission's historical deregulatory approach to VoIP, the development of this new service is beginning to have a positive effect on consumer choice by reducing the cost of communications for consumers, increasing competition among providers, and facilitating the deployment of broadband infrastructure. Changing course, and imposing traditional telephony regulations on this new industry at this time would disrupt this important progress.

The Commission should resist calls to apply the current telephony regulatory framework to an industry that is still in its infancy. VoIP is an emerging technology whose potential to generate competitors to existing telecommunications service providers is significant. VoIP applications are still under development and their progress and success are dependent upon continued investment and freedom to innovate. As noted above, the imposition of unnecessary and harmful economic regulation will limit the potential for VoIP products and services to make communications more innovative, affordable, and universal. Moreover, until the final form, use and implementation of this new technology is determined, premature regulatory mandates may result in costly and debilitating technological compliance efforts that turn out to be inappropriate or ineffective once the final form of the subject Internet-based technology is settled. Premature and expansive regulation could stifle innovation by limiting the direction in which a new technology can develop. Consistent with the nascent nature of VoIP, the Commission should

proceed with a light regulatory touch so that the full consumer benefits of this promising technology can be realized.¹⁷

C. The Commission Has Consistently Declined to Regulate VoIP Since Its Inception

To date, the Commission has wisely followed this light touch regulatory approach with respect to VoIP. The Commission has repeatedly stated its clear preference for deregulatory policies with respect to Internet-related services. In fact, the digital format and the networks used to transmit VoIP are identical to, and the information packets are often indistinguishable from, email and other forms of Internet service. In the *Stevens Report*, the Commission reported to Congress that it expressly deferred any regulatory classification of VoIP due to the fact that many of its forms have the characteristics of unregulated, information services.¹⁸ The Commission explained, “[w]e recognize that new Internet-based services are emerging, and that our application of statutory terms must take into account such technological developments. . . . We do not believe, however, that it is appropriate to make any definitive pronouncements in the absence of a more complicated record focused on individual offerings.”¹⁹

The Commission followed its policy of declining to regulate VoIP earlier this year when it decided the above-mentioned pulver.com petition. Significantly, the Commission stated that that decision “formalize[d] its policy of nonregulation to ensure that Internet applications remain insulated from unnecessary and harmful economic regulation at both the federal and state

¹⁷ Remarks of FCC Commissioner Kathleen Abernathy Before the Federal Communications Commission Bar Association New York Chapter, New York, NY, July 11, 2002 (describing light regulatory touch policy for new services as “the nascent services doctrine,”).

¹⁸ *Stevens Report*, ¶¶ 83-93.

¹⁹ *Id.* ¶ 90.

levels.”²⁰ The Commission should continue on this path and adopt a light touch regulatory framework for all IP-enabled applications.

D. Regulatory Mandates Are Not Appropriate For Private Networks

While a light regulatory touch is appropriate for VoIP services that are offered to the general public for voice communications, even less regulatory intrusion is appropriate for VoIP on private networks. As a policy matter, there are no good reasons to impose most regulatory mandates on private systems. And there is much harm that can come from such imposition because regulations translate to significant monetary and compliance burdens and these burdens can be unbearable for smaller private networks. In addition, by definition, these networks are private and do not have an impact on the public substantial enough to merit government regulation, unlike common carriers.²¹ In recognition of these facts, Congress has consistently limited most of its regulation of telecommunications, particularly those provisions calling for implementation of social goals, to public common carrier telecommunications systems.²² There

²⁰ *pulver.com Order*, ¶ 1.

²¹ See 47 U.S.C. § 153(44) (establishing that “telecommunications carriers” are treated as “common carriers” under the Act); 47 U.S.C. § 153(10) (defining “common carrier” as “any person engaged in common carriage for hire, in interstate or foreign communication by wire or radio”); *National Ass’n of Regulatory Utility Com’rs v. FCC*, 533 F.2d 601, 608-09, 642 (D.C. Cir. 1976) (citations omitted) (limiting “common carriers” to those “hold[ing] [themselves] out to serve indifferently all potential users”) (“[t]he characteristic of holding oneself out to serve indiscriminately appears to be an essential element, if one is to draw a coherent line between common and private carriers.”).

²² See e.g. 47 U.S.C. § 201 (prohibiting carriers from imposing unjust or unreasonable discrimination among similarly situated customers); 47 U.S.C. § 202 (establishing that all common carriers’ charges, practices, classifications and regulations must be just and reasonable); 47 U.S.C. § 203 (establishing common carrier tariff requirement); 47 U.S.C. § 214 (establishing certificate of public interest, convenience and necessity requirement for common carriers); 47 U.S.C. § 222 (requiring common carriers to protect customer proprietary network information); 47 U.S.C. § 225 (mandating that common carriers provide access to telecommunications services for people with disabilities); 47 U.S.C. § 251 (establishing common carrier interconnection obligation); 47 U.S.C. § 254 (establishing common carrier universal service obligation).

is no reason for the Commission to confound these clear jurisdictional limits with respect to VoIP or other Internet based technologies.

Private networks are specially configured to address the unique needs of a small group of users (e.g., an employer who operates a private system for his employees and wants that system to have certain features and not others) and not the general public. Accordingly, externally imposed requirements are not necessary to protect the public nor are they desirable because they may interfere with the use and purpose of the private network. Because private networks are designed by the users of the network to provide exactly the features and functions that the particular private users want for their own systems, the Commission has and should continue to recognize that, absent a compelling need and clear statutory authority, it should not intrude upon such private systems, impose its own judgment about what features these privately operated systems should have, and insist that the owners include a different set of costly features or capabilities than the users wanted.

As a result, the Commission must ensure that private networks are not intentionally or inadvertently subjected to regulations targeted for common carriers' systems. Private networks, such as police, fire, and other public safety systems, utility companies, private dispatch services, telematics membership services, and other enterprise-owned and operated networks, must continue to be exempt from the Title II obligations that apply to common carriers. In Section 332 of the Communications Act, Congress recognized the need to minimize regulation of private networks in the context of the private mobile radio service (PMRS).²³ This also would be

²³ In 1994, Congress amended Section 332 of the Communications Act of 1934, replacing private and public mobile service categories with two new categories of mobile services, commercial mobile radio service (CMRS) and PMRS, and treating CMRS providers, which includes PCS and cellular service providers, as common carriers subject to Title II obligations. *See* 47 U.S.C. § 332(c)(1)(A) (providing that all commercial mobile service providers “shall . . . be treated as . .

consistent with how the Commission has treated private networks in other contexts.²⁴ As in those situations, the Commission should conclude that any rules it adopts in this proceeding with respect to IP-enabled services would apply only to those public IP-enabled services that are open to and used by the general public as public telecommunications systems.

IV. THE COMMISSION SHOULD PERMIT INDUSTRY GROUPS TO COMPLETE ONGOING EFFORTS TO DEVELOP VOLUNTARY COMPLIANCE PLANS

Industry groups are engaged in development work related to important social goals, such as access for people with disabilities and emergency 911 service. The Commission's authority to impose such mandates on Internet devices, including VoIP, will depend to some extent on the classification of such services, but even in instances where the Commission may have Congressional authority to do so, it should not impose fixed social mandate burdens on VoIP at this time. Because VoIP is still in the early stages of development, the imposition of specific regulations to effectuate these policies is likely to stifle VoIP innovation and even impede full realization of these goals. In addition to adding substantial costs that could restrict deployment of this technology, the imposition of fixed technical requirements at this time could well obstruct promising new directions of technological development. It could even foreclose the development of better technological solutions to achieve these same social goals.

Motorola suggests that the VoIP industry be afforded time to develop technical solutions to these policy goals on their own. Numerous industry groups are currently working to develop

. common carrier[s] for purposes of this Act [.] . . ."). PMRS providers are not classified as common carriers and therefore are not subject to common carrier regulations.

²⁴ 47 C.F.R. § 20.18(a) (identifying carriers subject to E911 rules); 47 C.F.R. § 52.21(c) (identifying carriers subject to local number portability rules); 47 C.F.R. § 20.19(a) (identifying carriers subject to Hearing Aid Compatibility Act rules). With respect to private wireline networks, as mentioned above, *supra* fn 21, the Commission has excluded such networks from the definition of common carrier and, in turn, most regulation.

VoIP compliance standards on a number of regulatory issues. Voluntary consensus, rather than regulation, will spur effective deployment of emergency 911 services, lawful intercept and similar social policies for IP-enabled services. The industry is already working on solutions to meeting the goals of access by people with disabilities to emerging IP-enabled technologies and lawful intercept. For example, the PacketCable industry group recognized and mandated standards to support both legal intercept of VoIP calls and development of Telecommunications Devices for the Deaf (“TDDs”). In response to input from law enforcement authorities, PacketCable’s legal intercept requirements even have been enhanced. Similarly, industry standards groups are developing standards for intercept of IP based communications systems, such as those that carry VoIP.

At this time in the development and roll-out of VoIP technology, Motorola urges the Commission to limit its role to encouraging deployment of VoIP service and bringing the industry together to achieve any additional social goals through voluntary consensus. The Commission has already pursued this approach with its Internet Policy Working Group “Solutions Summit” on 911/E911 access by VoIP users and its “Solutions Summit” on disability access issues associated with IP-based services.²⁵ By bringing together the providers and users of VoIP services, the Commission can facilitate concrete solutions that can be implemented effectively and appropriately. Motorola supports continued Commission coordination of these efforts.

²⁵ “FCC Internet Policy Working Group To Hold Second ‘Solutions Summit’ On Friday, May 7, 2004,” News Release, Mar. 11, 2004; “FCC Internet Policy Working Group To Hold First ‘Solutions Summit’ On Thursday, March 18, 2004,” News Release, Feb. 12, 2004.

V. CONCLUSION

For the foregoing reasons, the Commission should preempt state regulation of IP-enabled services immediately and resolve the regulatory classification issue by the end of this year. The FCC should also continue its light regulatory touch for IP-enabled services, allowing industry groups to complete their ongoing voluntary efforts to meet certain social goals before imposing regulation in these areas.

Respectfully Submitted,

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Dated: May 28, 2004

APPENDIX A

MOTOROLA PRODUCTS, SERVICES AND RESOURCES DEVOTED TO VOIP

Motorola is committed to VoIP, and is working with cable operators and wireline and wireless service providers to roll out VoIP products and services as quickly as possible. As the following examples demonstrate, Motorola is advancing the deployment of VoIP in every industry sector with specific products, services and resources.

Motorola Cable VoIP Products and Services

Motorola participates with its major customers and other vendors in defining the specifications and standards that make new services possible. Motorola was a major contributor to both the DOCSIS (begun in 1996) and PacketCable (begun in 1999) specifications for the cable industry. Motorola continues to participate in these projects as well as in more recent data and video project initiatives in the cable industry. Motorola has developed a series of products since the initial DOCSIS and PacketCable specifications were released, and has participated in many VoIP trials since 1999. Some of Motorola's current VoIP products include:

- VT1000 telephony adapter, available with generic SIP software and as a PacketCable stand-alone MTA. Provides feature rich phone service using cable modem or DSL connection.
- SBV4200 – PacketCable embedded MTA, being supplied to Cablevision and Time-Warner in volume deployments. Uses industry-standard signaling protocols to provide high-speed Internet access and telephone service over cable lines directly to a consumer's home. Terminates two telephone lines by RJ-11 connectors and supports a high-speed data connection to a computer through Ethernet or USB data port.
- BSR64000 – PacketCable and DOCSIS qualified CMTS. A carrier-class, CMTS/intelligent edge router allows broadband operators to rapidly introduce differentiated data, voice and multimedia services for both corporate and residential subscribers and to deliver Quality of Service (QoS) levels end-to-end across broadband access, metropolitan and core networks.

Motorola's plans for future VoIP products include:

- SBV5120 – PacketCable embedded MTA – follow-on product to SBV4200. Uses industry-standard signaling protocols to provide high-speed Internet access and telephone service over cable lines directly to a consumer’s home. Supports two telephone lines that are terminated in two RJ-11 connectors and its cable modem connects to a computer through 10/100Base-T Ethernet or a USB data port.
- PB1000 – Battery backup power supply for use with SBV4200 and SBV5120. The PB1000 provides battery back-up power in case of in-home AC power failure to the Motorola SBV4200 or Motorola SBV5120.
- SBV5220 – PacketCable embedded MTA with integrated battery backup power supply. Uses industry-standard signaling protocols to provide high-speed Internet access and telephone service over cable lines directly to a consumer’s home. Terminates two telephone lines by RJ-11 connectors, supports a high-speed data connection to a computer through Ethernet or USB data port, and has an integrated battery backup.

Motorola manufactures data networking and VoIP products for both network operators and retail customers. For instance, from its full line of retail products for home data networking, Motorola supplies the telephony adapter used by Vonage. And, as the world’s largest manufacturer of DOCSIS cable modems (over 15 million shipped), Motorola manufactures VoIP telephony adapters and IP gateways for cable network operators. Motorola also makes infrastructure products, including a DOCSIS/PacketCable CMTS.

In addition, Motorola also has begun to distribute VoIP products. On May 3, 2004, Motorola announced its agreement with WorldGate Communications to begin distribution of the Ojo personal video phone.²⁶ The Ojo personal video phone leverages an enhanced version of the H.264 digital compression standard and high fidelity full duplex speakerphone technology. Motorola will market the product as part of its “connected home” portfolio of consumer broadband solutions. The Motorola Ojo personal video phone is expected to be available to

²⁶ See Motorola and WorldGate Communications Announce Exclusive Agreement for Distribution of Ojo™ Personal Video Phone, *Motorola Press Release* (rel. May 3, 2004).

consumers and businesses in the fall of this year. Additionally, Motorola and WorldGate will jointly develop future broadband video telephony solutions.

Motorola VoIP Wireless Telephony Products

Motorola designs and manufactures telecom infrastructure that complies with the main standards of 3GPP for GSM/UMTS and 3GPP2 for CDMA. The IP Multimedia Subsystem (“IMS”) was developed to augment the existing circuit and packet core domains. These two domains primarily will be used to provide cellular voice calls and data services such as Internet browsing. The IMS will enhance the capabilities of cellular operators; when the IMS is combined with the existing packet core, the basis of a converged core network is realized. The converged core network will allow inter-working between the various access technologies offered by broadcasters and wireline and wireless carriers today.

The ability to offer a seamless mobility experience as a subscriber moves between the various access technologies is not possible without the IMS. As a provider of IMS equipment, Motorola has already developed a converged core network that allows for inter-working of the enterprise, small office, home office (“SoHo”) and cellular markets. Our offering is founded on the basis of the IMS as a converged core network. The IMS will offer capabilities such as presence (the ability to know whether the person you are calling is on the network), location and push services.